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10/787,283

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EXAMINER

COUGHLAN, PETER D

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/787,283	Applicant(s) TEDESCO ET AL.	
	Examiner PETER COUGHLAN	Art Unit 2129	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18,61,76 and 77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18,61,76 and 77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>B'</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

1. This office action is in response to an AMENDMENT entered February 24, 2009 for the patent application 10/787283 filed on February 26, 2004.

2. All previous Office Actions are fully incorporated into this Final Office Action by reference.

Status of Claims

3. Claims 18, 61, 76, 77 are pending.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The term "substantially" in claims 18 and 76 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. There is no clear definition of what the applicant means by the term 'substantially.' Does an area

Art Unit: 2129

with 10% people capacity considered 'substantially non-existent' while 10.1% is considered 'substantially existent?'

These claims need to be amended or withdrawn from consideration.

Claim Rejections - 35 USC § 101

Claims 18, 61, 76 and 77 are rejected under 35 U.S.C. §101 for non-statutory material. Paragraphs 0048 and 0049 of the specification recite carrier wave as a form of computer readable medium. The claims use a 'central server' which inherently uses computer readable medium. The Office's position is that a carrier wave can not be used as storage for instructions which can be executed by a processor. Paragraph 0048 and 0049 allows this to occur.

These claims or specification must be amended or withdrawn from consideration.

Claims 18 and 61 are rejected for not being tied to a statutory class. The amendments regarding these two claims is a step in the right direction, but there is no connection between the preamble and the body of the claim. In these instances, replacing 'method' with 'computer implemented method' would remove this section of the 35 U.S.C. §101 rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/39724 in view of Matsumoto. (International Publication Number WO 00/39724, referred to as **WO 00/39724**; U. S. Patent 4245245, referred to as **Matsumoto**)

Claim 18

WO 00/39724 teaches receiving by a central server an image from an image capture device. (**WO 00/39724**, p2-3; 'Central server' of applicant is equivalent to 'central server' of WO 00/39724. 'Image capturing device' of applicant is equivalent to 'image based remote security system' of WO 00/39724.) in which the image capture device generates an image of an area in which human activity is desired to be substantially nonexistent (**WO 00/39724**, p1; Substantially nonexistent area of applicant is equivalent to a ATM of WO 00/39724.) determining by a central server information related to the area (**WO 00/39724**, p23; 'Determining by a central server information related to the area' of applicant is disclosed by 'central server determines whether the

Art Unit: 2129

reported emergency is in response to a test communication' of WO 00/39724.) receiving by a central server and from the first use device a request for a first user to monitor (**WO 00/39724**, p4; Receiving a request from a first user to monitor of applicant is disclosed by 'receiving a request from a user of a user device to monitor a remote location' of WO 00/39724.) receiving by a central server and from the first use device a user identifier (**WO 00/39724**, p7; Receiving a user identifier of applicant is equivalent to 'users can simply present their identifier to central server' of WO 00/39724.) verifying by a central server that the user identifier corresponds to the first user (**WO 00/39724**, p7; Verifying by a central server is inherent to the 'initial register' process of WO 00/39724. In order to obtain a user identifier, the user undergo an initial register process which is equivalent to verifying.) providing by a central server and from the first use device the first user with the image. (**WO 00/39724**, p8; Providing an image to a user of applicant is illustrated by 'enables communication between the location sensor devices and the user devices' of WO 00/39724.)

WO 00/39724 fails to particular call for receiving by a central server and from the first use device a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, an indication of uncertainty whether a human is present in the image.

Matsumoto teaches receiving by a central server and from the first use device a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the

Art Unit: 2129

image, an indication of uncertainty whether a human is present in the image.

(**Matsumoto**, C20:45-64; 'Human is present' of applicant would be a response of 'yes' of Matsumoto. 'No human is present' of applicant would be a response of 'no' of Matsumoto. 'Uncertainty whether a human is present' of applicant would be a response of 'maybe' of Matsumoto.) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of WO 00/39724 by indicating one of three responses as taught by Matsumoto for receiving by a central server and from the first use device a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, an indication of uncertainty whether a human is present in the image.

For the purpose of putting the response in a form in which the central server can calculate a percentage or a value which can be compared to a threshold.

WO 00/39724 teaches providing by a central server additional users with the image (**WO 00/39724**, p23; Providing additional users with the image of applicant is equivalent to 'central server will immediately communicate the video feed of the remote location to other users' of WO 00/39724.) receiving by a central server and from additional user devices responses to the image by the additional users (**WO 00/39724**, p23; Receiving additional responses of applicant is inherent by the ability of the central server to calculate the threshold number or percentage of WO 00/39724.) evaluating by a central server the received responses to determine if a notification situation exists (**WO 00/39724**, p23; Evaluating the responses of applicant is illustrated by the ability of

Art Unit: 2129

the central server to calculate the threshold number or percentage of WO 00/39724.); determining by the central server and based on the information related to the area, an entity to notify (**WO 00/39724**, p23; Determining if an entity is to be notified is illustrated by the threshold number or percentage being surpassed of WO 00/39724.); and notifying by the central server and in the case that the evaluating of the received responses determines that a notification situation exists, the entity. (**WO 00/39724**, p23; Notifying the entity of applicant is equivalent to 'central server will contact an emergency dispatch' of WO 00/39724.)

Claim 76

WO 00/39724 teaches a central server, comprising: a processor; and a memory in communication with the processor, the memory storing instructions that when executed by the processor result in (**WO 00/39724**, p2-3; 'Central server' of applicant is equivalent to 'central server' of WO 00/39724. It is inherent to a server to contain a processor and memory which is on communications with the processor.) receiving an image from an image capture device, in which the image capture device generates an image of an area in which human activity is desired to be substantially nonexistent (**WO 00/39724**, p1-3; 'Image capturing device' of applicant is equivalent to 'image based remote security system' of WO 00/39724. Substantially nonexistent area of applicant is equivalent to an ATM of WO 00/39724.) determining information related to the area (**WO 00/39724**, p23; 'Determining by a central server information related to the area' of applicant is disclosed by 'central server determines whether the reported emergency is

Art Unit: 2129

in response to a test communication' of WO 00/39724.); receiving, from a first use device, a request for a first user to monitor the area (**WO 00/39724**, p4; Receiving a request from a first user to monitor of applicant is disclosed by 'receiving a request from a user of a user device to monitor a remote location' of WO 00/39724.); receiving, from the first use device, a user identifier (**WO 00/39724**, p7; Receiving a user identifier of applicant is equivalent to 'users can simply present their identifier to central server' of WO 00/39724.); verifying that the user identifier corresponds to the first user (**WO 00/39724**, p7; Verifying by a central server is inherent to the 'initial register' process of WO 00/39724. In order to obtain a user identifier, the user undergo a initial register process which is equivalent to verifying.); providing, via the first use device, the first user with the image (**WO 00/39724**, p8; Providing an image to a user of applicant is illustrated by 'enables communication between the location sensor devices and the user devices' of WO 00/39724.);

WO 00/39724 fails to particular call for receiving, from the first use device, a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image.

Matsumoto teaches receiving, from the first use device, a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image. (**Matsumoto**, C20:45-64; 'Human is present' of applicant would be a response of 'yes' of Matsumoto. 'No human is

Art Unit: 2129

present' of applicant would be a response of 'no' of Matsumoto. 'Uncertainty whether a human is present' of applicant would be a response of 'maybe' of Matsumoto.) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of WO 00/39724 by indicating one of three responses as taught by Matsumoto for receiving, from the first use device, a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image.

For the purpose of putting the response in a form in which the central server can calculate a percentage or a value which can be compared to a threshold.

WO 00/39724 teaches providing additional users with the image (**WO 00/39724**, p23; Providing additional users with the image of applicant is equivalent to 'central server will immediately communicate the video feed of the remote location to other users' of WO 00/39724.); receiving, from additional user devices, responses to the image by the additional users (**WO 00/39724**, p23; Receiving additional responses of applicant is inherent by the ability of the central server to calculate the threshold number or percentage of WO 00/39724.); evaluating the received responses to determine if a notification situation exists (**WO 00/39724**, p23; Evaluating the responses of applicant is illustrated by the ability of the central server to calculate the threshold number or percentage of WO 00/39724.); determining, based on the information related to the area, an entity to notify (**WO 00/39724**, p23; Determining if an entity is to be notified is illustrated by the threshold number or percentage being surpassed of WO 00/39724.);

Art Unit: 2129

and notifying, in the case that the evaluating of the received responses determines that a notification situation exists, the entity. (**WO 00/39724**, p23; Notifying the entity of applicant is equivalent to 'central server will contact an emergency dispatch' of WO 00/39724.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 61 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/39724 in view of Capitant. (International Publication Number WO 00/39724, referred to as **WO 00/39724**; U. S. Patent 5185666, referred to as **Capitant**)

Claim 61

WO 00/39724 teaches receiving by a central server an image of an object from an image capture device situated in a particular area. (**WO 00/39724**, p2-3; 'Central server' of applicant is equivalent to 'central server' of WO 00/39724. 'Image capturing

Art Unit: 2129

device' of applicant is equivalent to 'image based remote security system' of WO 00/39724.) routing by a central server the image of the object to a plurality of remote viewers by transmitting an indication of the image of the object to a plurality of remote viewer devices, each remote viewer device being operated by one of the plurality of remote viewers (**WO 00/39724**, p3, p6; 'Routing by a central server the image' and 'remote viewer device being operated by one of the plurality of remote viewers' of applicant is disclosed by 'enabling communication between a sensor at the remote location and the user device' of WO 00.39724. 'Plurality or remote viewers' of applicant disclosed by 'plurality of user devices' of WO 00/39724.) requesting by a central server that each remote viewer of the plurality of remote viewers provide an indication. (**WO 00/39724**, p23; Requesting a response by a plurality of remote viewers of applicant is illustrated by 'central server will immediately communicate the video feed of the remote location to other users who will verify that an emergency has occurred' of WO 00/39724.)

WO 00/39724 fails to particular call for of whether the image of the object matches a reference image of a particular object.

Capitant teaches of whether the image of the object matches a reference image of a particular object. (**Capitant**, 2:13-20; 'image of the object matches a reference image of a particular object' of applicant is accomplished by a 'split screen display for comparing a digitized film frame with a reference frame' of Capitant.) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to

Art Unit: 2129

modify the teachings of WO 00/39724 by comparing images as taught by Capitant to have whether the image of the object matches a reference image of a particular object.

For the purpose of allowing users to compare a saved image with a current image for various purposes including security.

WO 00/39724 teaches receiving by a central server, from each remote viewer device of the plurality of remote viewers devices, the indication of whether the image of the object matches the reference image of the particular object; and triggering by the central server and based on the received indications from the plurality of remote viewer devices of whether the images of the object matches the reference image of the particular object, an alarm condition. (**WO 00/39724**, p23; 'Triggering ... an alarm condition' of applicant occurs if a threshold number or percentage of user have reported the emergency of WO 00/39724. Receiving responses from the plurality of remote viewers of applicant is inherent by WO 00/39724 by the ability to calculate if a threshold has been crossed or a percentage of viewers responses.)

Claim 77

WO 00/39724 teaches a central server, comprising: a processor; and a memory in communication with the processor, the memory storing instructions that when executed by the processor result in receiving an image of an object from an image capture device situated in a particular area (**WO 00/39724**, p2-3, ; 'Central server' of applicant is equivalent to 'central server' of WO 00/39724. 'Image capturing device' of applicant is equivalent to 'image based remote security system' of WO 00/39724. It is

Art Unit: 2129

inherent with a server to have a processor and memory in communication with a processor.) routing the image of the object to a plurality of remote viewers by transmitting an indication of the image of the object to a plurality of remote viewer devices, each remote viewer device being operated by one of the plurality of remote viewers (**WO 00/39724**, p3, p6; 'Routing by a central server the image' and 'remote viewer device being operated by one of the plurality of remote viewers' of applicant is disclosed by 'enabling communication between a sensor at the remote location and the user device' of WO 00.39724. 'Plurality or remote viewers' of applicant disclosed by 'plurality of user devices' of WO 00/39724.) requesting that each remote viewer of the plurality of remote viewers provide an indication. (**WO 00/39724**, p23; Requesting a response by a plurality of remote viewers of applicant is illustrated by 'central server will immediately communicate the video feed of the remote location to other users who will verify that an emergency has occurred' of WO 00/39724.)

WO 00/39724 fails to particular call for of whether the image of the object matches a reference image of a particular object.

Capitant teaches of whether the image of the object matches a reference image of a particular object. (**Capitant**, 2:13-20; 'image of the object matches a reference image of a particular object' of applicant is accomplished by a 'split screen display for comparing a digitized film frame with a reference frame' of Capitant.) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of WO 00/39724 by being able to compare images as taught by

Art Unit: 2129

Capitant to have whether the image of the object matches a reference image of a particular object.

For the purpose of allowing users to compare a saved image with a current image for various purposes including security.

WO 00/39724 teaches receiving, from each remote viewer device of the plurality of remote viewer devices, the indication of whether the image of the object matches the reference image of the particular object; and triggering, based on the received indications from the plurality of remote viewer devices of whether the image of the object matches the reference image of the particular object, an alarm condition. (**WO 00/39724**, p23; 'Triggering ... an alarm condition' of applicant occurs if a threshold number or percentage of user have reported the emergency of WO 00/39724. Receiving responses from the plurality of remote viewers of applicant is inherent by WO 00/39724 by the ability to calculate if a threshold has been crossed or a percentage of viewers responses.)

Response to Arguments

5. Applicant's arguments filed on February 24, 2009 for claims 18, 61, 76 and 77 have been fully considered but are not persuasive.

6. In reference to the Applicant's argument:

Art Unit: 2129

REMARKS

I. Introduction

Claims 18 and 61 are currently pending in the present application. Claims 18 and 61 are independent. The Specification stands objected to and all pending claims stand rejected. In particular:

(A) claims 18 and 61 stand rejected under 35 U.S.C. §101 as being allegedly drawn to non-statutory subject matter;

(B) claim 18 stands rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite;

(C) claim 18 stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 5,559,496 (hereinafter "Dubats") in view of U.S. Patent No. 4,245,245 (hereinafter "Matsumoto"), in further view of U.S. Patent Application Publication No. 2002/0138847 (hereinafter "Abrams"); and

(D) claim 61 stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dubats in view of Matsumoto, in further view of Abrams, in yet further view of U.S. Patent No. 5,185,666 (hereinafter "Capitant").

Upon entry of this amendment, which is respectfully requested, claims 18 and 61 will be amended solely for clarification purposes and for purposes of updating due to recent developments in case law (i.e., not for purposes related to any art of record), and new claims 76-77 will be added as statutory class variants of claims 18 and 61, respectively. No new matter is believed to be introduced by this amendment.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

II. The Examiner's Objection

The Examiner objects to the Specification for describing a class of computer-readable medium that is currently deemed non-statutory (e.g., carrier waves). Office Action, pg. 2, bullet 4. In as much as the claims are part of the Specification, any reference to 'carrier waves' in the pending claims will indeed be corrected by this paper. Applicants respectfully note, however, that Applicants are unaware of any statute, regulation, guidance materials, or case law that would permit the Examiner to object to any other portion of the Specification (e.g., the written description) for containing a

Art Unit: 2129

reference to and/or description of subject matter that is currently believed to be non-statutory.

Accordingly, Applicants respectfully request that this ground for objection to the Specification be withdrawn.

III. The Examiner's Rejections

A. 35 U.S.C. §101

Claims 18 and 61 stand rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. While Applicants do not necessarily agree with this ground for rejection, based on recent developments in case law with respect to "method" claims, claims 18 and 61 are amended herein to recite the requisite structure currently required for "method" claims, rendering this ground for rejection moot with respect thereto.

At least for these reason, Applicants respectfully request that this § 101 ground for rejection of claims 18 and 61 be withdrawn.

Examiner's response:

The specification objection was brought forth to allow the applicant to alter the specification without introducing new matter and avoid the 35 U.S.C. §101 rejection. The Office does not permit using carrier waves as storage medium and the recited paragraphs can be interpreted as permitting this to occur. In addition, altering the preamble in claims 18 and 61 would remove the rejection of the second portion of the rejection.

7. In reference to the Applicant's argument:

B. 35 U.S.C. §112, second paragraph

Claim 18 stands rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. More specifically, the Examiner states that the term "substantially", recited by claim 18, is a relative term that renders claims 18 indefinite.

Art Unit: 2129

In response to Applicants' previous arguments regarding this ground for rejection (which are hereby incorporated by reference herein), the Examiner appears to assert that 'relative' terms are per se indefinite. Office Action, pg. 12, fourth line from the bottom. Applicants respectfully direct the Examiner's attention to MPEP §2173.05(b), which provides detailed guidance with respect to 'relative' terms:

The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification. MPEP §2173.05(b); emphasis in original.

At least because there is no per se indefiniteness of relative terms and at least because the Examiner has failed to provide any evidence that one of ordinary skill would not understand the claimed language, the Examiner has simply and entirely failed to establish a prima facie case for indefiniteness, and the § 112, second paragraph ground for rejection of claim 18 should therefore be withdrawn.

Examiner's response:

The rejection stands. See the arguments in section 4 of this Office Action.

8. In reference to the Applicant's argument:

C. 35 U.S.C. §103(a) - Dubats, Matsumoto, Abrams

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Dubats in view of Matsumoto, in further view of Abrams. Applicants traverse this ground for rejection as follows.

1. No Prima Facie Case of Obviousness

The Examiner has failed to show how every element of the claims is taught or suggested by the cited references and the Examiner has entirely failed to address or consider (much less resolve) any of the requisite factual inquiries as set forth in *Graham v. John Deere*. The Examiner has further failed to set forth a valid reason that would have led one of ordinary skill in the art to combine the cited references as suggested by the Examiner. At least for these reasons, as described in more detail hereinafter, the

Art Unit: 2129

Examiner has failed to establish a prima facie case for obviousness.

a) The reference fails to teach or suggest: receiving, by the central server and from the first use device, a response to the image by the first user, in which the response is one of" an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination~ teaches or suggests limitations of claim 18. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest receiving, by the central server and from the first use device, a response to the image by the first user, in which the response is one of" an indication that a human is" present in the image, an indication that no human is" present in the image, and an indication of uncertainty whether a human is" present in the image.

The Examiner states that Dubats fails to teach or suggest the above-quoted limitation. Office Action, pg. 6, lines 6-9. Applicants agree. The Examiner goes on, however, to rely upon Matsumoto to make up for this deficiency of Dubats. Specifically, the Examiner alleges that Matsumoto describes receiving viewer responses comprising answers such as "yes", "no", and "maybe".

Applicants do not disagree that Matsumoto describes receiving responses from cable TV viewers where the responses comprise short answers such as "yes", "no", and "maybe". This functionality of Matsumoto, however, simply does not read on the above-quoted limitation.

Matsumoto is entirely devoid of mention or reference to any sort of surveillance applications. While Dubats at least describes a surveillance system, although devoid of any teaching or suggestion of having people provide responses regarding whether humans are present in images, Matsumoto fails both to describe surveillance applications as well as asking people whether humans are present in images. Thus, while Matsumoto could indeed be used as evidence that the above-quoted limitation is enabled because Matsumoto shows one method via which responses from people may be received, there is simply no description in Matsumoto that reads on the above-quoted limitation.

Abrams simply fails to make up for these deficiencies of Matsumoto and Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest receiving, by the central server and from the first use device, a response to the image by the first user, in which the response is one of" an indication that a human is present in the image, an indication that no human is present in the image, and an indication of

Art Unit: 2129

uncertainty whether a human is" present in the image, Dubats, Matsumoto, and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this § 103(a) ground for rejection of claim 18 be withdrawn.

b) The reference fails to teach or suggest: receiving, by the central server and from additional user devices, responses to the image by the additional users

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination~ teaches or suggests limitations of claim 18. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest receiving, by the central server and from additional user devices, responses to the image by the additional users.

The Examiner relies upon Abrams to allegedly show a teaching of the above- quoted limitation. Specifically, the Examiner states that "[i]t is inherent [in Abrams] that a user who provides surveillance would respond if the situation dictates." Office Action, pg. 7, lines 9-11.

Abrams is not at all directed to security or surveillance applications. Nor does Abrams describe receiving responses related to images or remote locations. Thus, it simply does not necessarily flow that the viewers in Abrams would provide responses and it is therefore not an inherent teaching of Abrams.

Dubats and Matsumoto simply fail to make up for this deficiency of Abrams.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest receiving, by the central server and from additional user devices, responses to the image by the additional users. Dubats, Matsumoto and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this § 103(a) ground for rejection of claim 18 be withdrawn.

c) The reference fails to teach or suggest: evaluating, by the central server, the received responses to determine ira notification situation exists

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination: teaches or suggests limitations of claim 18. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest evaluating, by the central server, the received responses to determine ira notification situation exists.

The Examiner relies upon Dubats to allegedly provide a teaching of the above- quoted

Art Unit: 2129

limitation. Specifically, the Examiner equates the above-quoted limitation with the "expert system" of Dubats. Office Action, pg. 7, lines 19-20.

The Examiner, however, grossly misinterprets the above-quoted limitation and/or the cited reference. Claim 18 recites, for example, receiving indications, from a plurality of users (e.g., humans) regarding whether a human is present in an image. Dubats describes a computer analyzing "energy projections" at a remote site to estimate the size, speed, etc. of intruding objects. These are simply two entirely different ways of detecting security breaches. Dubats does not utilize humans at all to detect breaches (much less a plurality of humans), and instead teaches an entirely automated "expert system" (presumably to reduce the amount of manpower needed to effect a security solution).

Neither Matsumoto nor Abrams makes up for this deficiency of Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest evaluating, by the central server, the received responses to determine if a notification situation exists, Dubats, Matsumoto, and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this § 103(a) ground for rejection of claim 18 be withdrawn.

d) No Reason to Combine is Evident

Even if the cited references taught or suggested each limitation of claim 18 (which Applicants maintain is not the case), the Examiner has failed to establish a prima facie case for obviousness for claim 18, at least because the Examiner has provided no valid argument, much less evidence (much less substantial evidence) that there would have been some reason for someone of ordinary skill in the art to combine the cited references to read on the pending claims.

The only reasoning that the Examiner provides for combining the references is that it would have been obvious to combine the references "[f]or the purpose of avoiding the high error cost of a single user by using redundant users." Office Action, pg. 7, lines 15-16 and pg. 9, lines 1-2. Applicants respectfully note that none of the cited references describes utilizing a single user to detect security breaches (much less by comparing images to reference images, etc.). It is therefore entirely unclear how one of ordinary skill could have possibly been motivated or otherwise have been caused to (a) modify the references to utilize a user (instead of a computerized system like in Dubats), to detect breaches in security, or (b) then feel that one user would cause too many errors, and accordingly believe that paying more users would be more beneficial to reduce errors. Neither of these premises is supported by any evidence of record. Nor do either of these premises appear valid or reasonable.

Art Unit: 2129

Accordingly, at least because the Examiner has (i) failed to show how every limitation of claim 18 is taught or suggested, (ii) failed to provide a proper reason to combine the cited references, and (iii) failed to support any reason to combine by evidence on the record, the Examiner has failed to set forth a prima facie case for obviousness of claim 18.

Applicants therefore respectfully request that this § 103(a) ground for rejection of claim 18 be withdrawn.

e) No Factual Inquiries Resolved

Applicants respectfully note that the factual inquiries that must be resolved to establish a prima facie case of obviousness, as set forth in *Graham v. John Deere*, may be summarized as follows: (i) determine the scope and content of the prior art; (ii) ascertain the differences between the prior art and the claims at issue; (iii) resolve the level of ordinary skill in the pertinent art; (iv) and consider objective evidence (e.g., secondary considerations).

Applicants further respectfully note that the Examiner has provided no evidence in support of a prima facie case for obviousness, nor has the Examiner resolved any of the factual determinations required by *Graham v. John Deere*. Within such an evidentiary vacuum, the Examiner's unsupported conclusory statement that it would have been obvious to combine Dubats, Matsumoto, and Abrams to achieve the claimed embodiments, is entirely meaningless.

At least for these reasons, the Examiner has entirely failed to establish a prima facie case for obviousness, and the §103(a) ground for rejection of claim 18 should therefore be withdrawn.

Examiner's response:

Matsumoto is in regards to an interactive CATV system. This parallels the invention. Matsumoto is used in combination with the other references and is used only to illustrate three possible choices which maps to the claims. Abrams and Dubats are no longer used as references.

Art Unit: 2129

9. In reference to the Applicant's argument:

D. 35 U.S.C. §103(a) - Dubats, Matsumoto, Abrams, Capitant

Claim 61 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Dubats in view of Matsumoto, in further view of Abrams, in yet further view of Capitant. Applicants traverse this ground for rejection as follows.

1. No Prima Facie Case of Obviousness

The Examiner has failed to show how every element of the claims is taught or suggested by the cited references and the Examiner has entirely failed to address or consider (much less resolve) any of the requisite factual inquiries as set forth in *Graham v. John Deere*. The Examiner has further failed to set forth a valid reason that would have led one of ordinary skill in the art to combine the cited references as suggested by the Examiner. At least for these reasons, as described in more detail hereinafter, the Examiner has failed to establish a prima facie case for obviousness.

a) The reference fails to teach or suggest: requesting, by the central server, that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination~ teaches or suggests limitations of claim 61. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest requesting, by the central server, that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object.

The Examiner relies on Dubats and the "expert system" of Dubats as being equivalent to a plurality of remote viewers as claimed. Office Action. Pg. 10, lines 13-16. As describe herein, this equivalency is simply invalid. Nowhere does Dubats "request" that the expert system perform any function - it is a computer system that is programmed to automatically perform the given function. In contrast, and read in light of the Specification which defines and provides many examples of "remote viewers" (e.g., as being humans), the currently claimed embodiment of claim 61 recites taking the affirmative step of "requesting" that the "remote viewers" perform a task. Dubats simply does not contemplate nor provide written description of such a concept.

Capitant, Matsumoto, and Abrams all fail to make up for this deficiency of Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest requesting, by the central server, that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference

Art Unit: 2129

image of a particular object, Dubats, Matsumoto, and Abrams fail to render obvious claim 61.

Applicants therefore respectfully request that this § 103(a) ground for rejection of claim 61 be withdrawn.

b) No Reason to Combine is Evident

Even if the cited references taught or suggested each limitation of claim 61 (which Applicants maintain is not the case), the Examiner has failed to establish a prima facie case for obviousness for claim 61, at least because the Examiner has provided no valid argument, much less evidence (much less substantial evidence) that there would have been some reason for someone of ordinary skill in the art to combine the cited references to read on the pending claims.

The only reasoning that the Examiner provides for combining the references is that it would have been obvious to combine the references "[f]or the purpose of avoiding the high error cost of a single user by using redundant users." Office Action, pg. 7, lines 15-16 and pg. 9, lines 1-2. Applicants respectfully note that none of the cited references describes utilizing a single user to detect security breaches (much less by comparing images to reference images, etc.). It is therefore entirely unclear how one of ordinary skill could have possibly been motivated or otherwise have been caused to (a) modify the references to utilize a user (instead of a computerized system like in Dubats), to detect breaches in security, or (b) then feel that one user would cause too many errors, and accordingly believe that paying more users would be more beneficial to reduce errors. Neither of these premises is supported by any evidence of record. Nor do either of these premises appear valid or reasonable.

Accordingly, at least because the Examiner has (i) failed to show how every limitation of claim 61 is taught or suggested, (ii) failed to provide a proper reason to combine the cited references, and (iii) failed to support any reason to combine by evidence on the record, the Examiner has failed to set forth a prima facie case for obviousness of claim 61.

Applicants therefore respectfully request that this § 103(a) ground for rejection of claim 61 be withdrawn.

c) No Factual Inquiries Resolved

Applicants respectfully note that the factual inquiries that must be resolved to establish a prima facie case of obviousness, as set forth in *Graham v. John Deere*, may be summarized as follows: (i) determine the scope and content of the prior art; (ii) ascertain the differences between the prior art and the claims at issue; (iii) resolve the level of

Art Unit: 2129

ordinary skill in the pertinent art; (iv) and consider objective evidence (e.g., secondary considerations).

Applicants further respectfully note that the Examiner has provided no evidence in support of a prima facie case for obviousness, nor has the Examiner resolved any of the factual determinations required by *Graham v. John Deere*. Within such an evidentiary vacuum, the Examiner's unsupported conclusory statement that it would have been obvious to combine Dubats, Matsumoto, Abrams, and Capitant to achieve the claimed embodiments, is entirely meaningless.

At least for these reasons, the Examiner has entirely failed to establish a prima facie case for obviousness, and the §103(a) ground for rejection of claim 61 should therefore be withdrawn.

IV. New Claims

New independent claims 76-77 are statutory class variants of pending claims 18 and 61 respectively, and are accordingly believed to be patentable over the cited references at least for the reasons otherwise presented herein.

Examiner's response:

Capitant is used only to illustrate the ability to compare an image to that of an image stored within a database via a split screen interface. This maps to the claims and the Examiner sees no problem with the combination of the two references.

Examination Considerations

10. The claims and only the claims form the metes and bounds of the invention.

“Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in

Art Unit: 2129

the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has the full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

11. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but link to prior art that one of ordinary skill in the art would find inherently appropriate.

12. Examiner's Opinion: Paragraphs 10 and 11 apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 2129

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Claims 18, 61, 76, 77 are rejected.

Correspondence Information

15. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner Peter Coughlan, whose telephone number is (571) 272-5990. The Examiner can be reached on Monday through Friday from 7:15 a.m. to 3:45 p.m.

Art Unit: 2129

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor David Vincent can be reached at (571) 272-3080. Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,

Washington, D. C. 20231;

Hand delivered to:

Receptionist,

Customer Service Window,

Randolph Building,

401 Dulany Street,

Alexandria, Virginia 22313,

(located on the first floor of the south side of the Randolph Building);

or faxed to:

(571) 272-3150 (for formal communications intended for entry.)

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

/P. C./

Application/Control Number: 10/787,283

Page 28

Art Unit: 2129

Examiner, Art Unit 2129

Peter Coughlan

4/30/2009

/David R Vincent/

Supervisory Patent Examiner, Art Unit 2129